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Re: Amendment of Marijuana Regulations

Dear Planning Commissioners:

Our firm represents Subdued Excitement, Inc., which intends to operate a tier 2 marijuana facility in unincorporated Whatcom County. We have reviewed the proposed marijuana code amendments and we urge the Planning Commission to slow down this process. The proposed changes are a significant departure from current regulations and we do not believe that many licensees are aware of these proposed changes, which will significantly affect their ability to expand and continue to operate.

For example, requiring conditional use permits for indoor production facilities in both the Rural and Agricultural zones is a major change from current regulations. We strongly urge the Planning Commission to allow indoor production to continue as an outright permitted use in the Agricultural zone. While we think it is fair to distinguish between outdoor and indoor grow facilities and to regulate them separately, we do not agree that Rural and Agricultural districts should be treated the same in terms of how these uses are permitted. As noted in the Staff

Memorandum, the complaints regarding odor, lighting, and energy use, which spurred the current regulatory review, typically occur in zones that have more residential uses. The Staff Memorandum, however, fails to differentiate between the Rural and Agricultural zones in terms of such residential use. The Rural zone is primarily a residential district as its purpose is to maintain the rural residential character of areas so designated on the County's Comprehensive Plan map. WCC 20.36.010.

In contrast, the Agricultural zone is not meant to be a residential district. Rather, the purpose of the Agricultural zone is to ensure a viable agricultural industry and the economic viability of supporting services. WCC 20.40.010. Consequently, impacts in these zones cannot be evaluated equally, since the Agricultural zone is meant to accommodate uses that would necessarily have more impacts than single family residential uses in the Rural zone.

Indoor marijuana production has the same if not less impacts in terms of noise, odor and energy use than other uses allowed outright in the Agricultural zone such as farming, raising livestock, commercial forestry, etc. Thus, indoor marijuana production in the Agricultural zone should not require a conditional use permit, but instead should be permitted outright like other similar uses in the Agricultural zone. Given the comparable impacts from an indoor marijuana production facility to any other use in the Agricultural zone, requiring a CUP or an ADM would serve little purpose other than adding a great deal of cost and expense to an already complicated licensing and permitting process for marijuana businesses.

Similarly, there is no reason to prohibit tier 3 production facilities in the Agricultural zone. If there are parcels sufficient in size to meet the County's development regulations, then there shouldn't be a prohibition on what tier facility a licensee may operate. As the County does not regulate the number of livestock or crops that may be grown on Agricultural lands, it seems to be arbitrary decision making to disallow a tier 3 facility on a property in the Agricultural zone that would otherwise meet all other development regulations (i.e. setbacks, critical areas restrictions, water availability, etc.)

The same holds true for limiting the number of licensed marijuana operations per lot. If the overall development meets the County's development code requirements than there is no apparent reason to restrict the number of licenses operated on a single property. The County already restricts in which zones these businesses may locate and the current setback requirements result in very few properties in the County that are actually feasible for a marijuana business to locate upon. Again, there should be a distinction between the Rural and Agricultural zones. The Staff Memorandum indicates that having multiple licenses on a single lot is primarily a concern in the residential districts. If this is the case, then this limitation should not be applied in the Agricultural zone.

Further, we urge the Planning Commission not to prohibit the expansion of nonconforming indoor marijuana grows within existing buildings. Currently, the County already strictly regulates expansion of nonconforming uses such that they can only expand into a currently occupied building. WCC 20.83.020. Prohibiting expansion into an existing building serves no logical

purpose and is overly burdensome. Often licensees commence operations in phases, such that they grow a portion of their allowed canopy until revenues allow full use of their license. The LCB allows only one licensee to operate per premises, thus the only thing this proposed regulation would do is stop businesses from operating to the full extent of their license.

We have reviewed the public comments submitted to the Planning Commission and many of the concerns appear to be in regard to enforcement of either existing county development regulations (i.e. odor and noise) or licensing issues (i.e. canopy size, security, etc.) As discussed in our prior correspondence, rather than require a lengthy and likely purposeless conditional use and/or administrative review process, the County could simply require marijuana businesses to obtain a marijuana business license from Whatcom County to ensure that a licensee is operating consistent with LCB rules, its operational plan submitted to the State, and canopy limitations. A business license and enhanced facility design standards, as currently proposed, would likely alleviate stated concerns, while allowing marijuana business a fair opportunity to succeed.

As discussed at the Planning Commission's prior work session, the County should make sure that stakeholders are made aware of these changes. Locating property suitably zoned for a marijuana facility is already a very difficult and costly task. These proposed regulations will not only make it virtually impossible for existing licensees to expand and/or move locations, but will also make it infeasible for new licensees to locate in most areas of the County. Thus, the Planning Commission should ensure that existing licensees and those in the midst of developing property for marijuana business use have the opportunity to meaningfully participate in this process.

Very truly yours,

WOLF & LEE, LLP



Heather Wolf

cc: Client
Cliff Strong, Senior Planner